

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WANDA TORRES,)	
)	
Plaintiff,)	
)	Case No. _____
vs.)	
)	(Removed from the State Court
ALBERTO CARBALLO, and)	of Gwinnett County, Georgia,
BRITO & SON TRANSPORT, INC.)	Civil Action No. 21-C-07430-S5)
)	
Defendants.)	
_____)	

DEFENDANTS' NOTICE OF REMOVAL

Defendants Alberto Carballo and Brito & Son Transport, Inc. ("Brito & Son"), by and through undersigned counsel, hereby file this Notice of Removal pursuant to 28 U.S.C. § 1441 *et seq.* and 28 U.S.C. § 1332. In support thereof, Defendants show the Court as follows:

Timeliness of Removal and Consent

1. On October 21, 2021, Defendant Brito & Son Transport, Inc. was served in the matter styled *Wanda Torres v. Alberto Caballo and Brito & Son Transport, Inc.*, bearing Gwinnett County State Court case number 21-C-07430-S5. Defendant Alberto Carballo is believed to have been served on or around November 10, 2021, but defendants have not yet been provided with any proof of service documentation. The Amended Complaint

(“Complaint”) and all other state court pleadings, process, and orders are attached hereto as Exhibit A.

2. Plaintiff alleges personal injuries resulting from a motor vehicle accident involving a vehicle driven by Defendant Carballo and owned by Defendant Brito & Son. (Complaint ¶ 6).
3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(1) and *Murphy Brothers v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), in that it was filed within one year of the commencement of the action and within thirty days of the date of service.
4. Both Defendants consent to removal of this action, through undersigned counsel. *See Cook v. Randolph County, Ga.*, 573 F.3d 1143, 1150-51 (11th Cir. 2009) (proper for counsel to represent that clients consent to removal).

Jurisdiction

5. This is a civil action over which this court has original jurisdiction pursuant to 28 U.S.C. § 1332, and which Defendants may remove pursuant to 28 U.S.C. § 1441, in that Plaintiff is, and at all relevant times has been, a citizen of a state different from any Defendant, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
6. **Plaintiff’s Citizenship:** Plaintiff is a citizen of the State of Georgia. (Complaint ¶ 1).

7. **Defendants' Citizenship:** Defendants are foreign citizens, as Plaintiff alleges in her Complaint. (Complaint ¶¶ 2-3). Defendant Carballo is a citizen of the State of Florida. Pursuant to 28 U.S.C. § 1332(c)(1), Defendant Brito & Son is a citizen of the State of Florida, in which it is incorporated and has its principal place of business. Brito & Son's Florida Secretary of State record is attached hereto as Exhibit B.
8. **Amount in Controversy:** This case meets the \$75,000 amount-in-controversy requirement. Plaintiff's Complaint specifically seeks the recovery of past medical bills in the amount of \$137,329.22. (Complaint ¶ 32).

Venue

9. The Northern District of Georgia, Atlanta Division, is the proper district and division for the removal of this action pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), as this action was originally brought in the State Court of Gwinnett County, Georgia, which is within this District and Division.

Notice to Plaintiff and to State Court of Removal

10. A true and correct copy of this Notice of Removal will be promptly served on the Plaintiff and will be promptly filed with the Clerk of the State Court of Gwinnett County, Georgia, as required by 28 U.S.C. § 1446(d).

Respectfully submitted this 19th day of November, 2021.

/s/ Andrew M. Capobianco

Wayne D. Taylor

Georgia Bar No. 701275

Andrew M. Capobianco

Georgia Bar No. 012592

Samantha Bryn McDermott

Georgia Bar No. 506028

*Attorneys for Defendants Alberto
Carballo and Brito & Son Transport,
Inc.*

MOZLEY, FINLAYSON & LOGGINS LLP

1050 Crown Pointe Parkway, Suite 1500

Atlanta, Georgia 30338

(404) 256-0700 phone

(404) 250-9355 fax

wtaylor@mflaw.com

acapobianco@mflaw.com

bmcdermott@mflaw.com

CERTIFICATE OF TYPE SIZE COMPLIANCE

I hereby certify that pursuant to Local Rule 5.1, the foregoing pleading is prepared in Times New Roman, 14 point.

CERTIFICATE OF SERVICE

This is to certify that I have this day served all parties of record with the foregoing NOTICE OF REMOVAL by providing an ELECTRONIC SERVICE COPY of the filing via the CM/ECF System and by e-mail and by causing a copy of same to be deposited in the United States mail, postage prepaid, and properly addressed as indicated below:

Ryan M. Horn, Esq.
Jan P. Cohen, Esq.
Kenneth S. Nugent, P.C.
4227 Pleasant Hill Road
Building 11, Suite 300
Duluth, GA 30096
rhorn@attorneykennugent.com
jcohen@attorneykennugent.com

This 19th day of November, 2021.

/s/ Andrew M. Capobianco

Andrew M. Capobianco
Georgia Bar No. 012592

MOZLEY, FINLAYSON & LOGGINS LLP
1050 Crown Pointe Parkway, Suite 1500
Atlanta, Georgia 30338
(404) 256-0700 phone
(404) 250-9355 fax
acapobianco@mflaw.com